

**HOUSE . . . . . No. 3546****The Commonwealth of Massachusetts**

PRESENTED BY:

**Cleon H. Turner***To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act protecting residents of the commonwealth from door-to-door solicitors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cleon H. Turner	1st Barnstable
John D. Keenan	7th Essex
James Dwyer	30th Middlesex
Robert A. O'Leary	Cape and Islands
Bruce E. Tarr	First Essex and Middlesex
Jennifer M. Callahan	18th Worcester
Timothy J. Toomey, Jr.	26th Middlesex
Louis L. Kafka	8th Norfolk
Thomas M. Stanley	9th Middlesex
William Lantigua	16th Essex
David P. Linsky	5th Middlesex
Paul McMurtry	11th Norfolk
Richard T. Moore	Worcester and Norfolk
Geraldo Alicea	6th Worcester
Lori Ehrlich	8th Essex
Barbara A. L'Italien	18th Essex
Sarah K. Peake	4th Barnstable
John W. Scibak	2nd Hampshire
Todd M. Smola	1st Hampden

Christine E. Canavan

10th Plymouth

Bradford R. Hill

4th Essex

Robert L. Rice, Jr.

2nd Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT PROTECTING RESIDENTS OF THE COMMONWEALTH FROM DOOR-TO-DOOR SOLICITORS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 159 of the Massachusetts General Laws shall be amended by adding after Chapter 159C the following section: Chapter 159D as follows:

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Consumer", an individual who has a permanent or temporary home in the commonwealth the commonwealth and is a prospective recipient of consumer goods or services.

"Consumer goods or services", any article or service that is purchased, leased, exchanged or received primarily for personal, family or household purposes including, but not limited to, consumer goods of every kind and nature, stocks, bonds, mutual funds, annuities and other financial products.

"Existing customer", a consumer with whom the person or entity making a sales visit has maintained an account or had a business relationship within the previous 24 months.

"Marketing or sales solicitation", the initiation of a visit to the property of a consumer to encourage the purchase or rental of consumer goods of any kind or nature, or investment in, property, goods or services but not including a; (i) a visit to a consumer with that consumer's prior express written or verbal invitation or permission; (ii) by a tax-exempt nonprofit organization; (iii) by an individual or organization for a noncommercial purpose, such as a poll or survey; or (iv) to a consumer in response to a visit made by such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed location.

"Office", the office of consumer affairs and business regulation.

"Property of a Consumer", Any property where a consumer resides permanently or temporarily whether or not such property is actually owned by the consumer.

22 “Sales visit ”, a visit made by a solicitor to a consumer for the purpose of: (i) engaging in a marketing or  
23 sales solicitation; (ii) soliciting an extension of credit for consumer goods or services; or (iii) obtaining  
24 information that will or may be used for marketing or sales solicitation or exchange of or extension of  
25 credit for consumer goods or services.

26 "Solicitor", an individual, association, corporation, partnership, limited partnership, limited liability  
27 company or other business entity, or a subsidiary or affiliate thereof, doing business in the commonwealth  
28 and any employee, agent, representative, person going door to door selling products for such person or  
29 entity who makes or causes to be made a sales visit to the home of a consumer. This definition shall  
30 include transient vendors licensed under chapter 101.

31 "Unsolicited sales visit", a sales visit to any residential property for the purpose of selling any item,  
32 product or service other than a visit made: (i) in response to an express written or verbal request of the  
33 consumer called; (ii) primarily in connection with an existing debt or contract, payment or performance of  
34 which has not been completed at the time of the visit; (iii) to an existing customer unless such customer  
35 has stated to the solicitor that such customer no longer wishes to receive the sales visits of such solicitor;  
36 or (iv) in which the sale of goods and services is not completed, and payment or authorization of payment  
37 is not required, until after a face-to-face sales presentation by the solicitor or a meeting between the  
38 solicitor and customer. Nothing in this definition shall prevent legislation that specifically exempts certain  
39 sales visits from the operation of this law. This definition shall include visits by transient vendors licensed  
40 under Chapter 101.

41 Section 2. In any city where this Chapter is accepted by a majority vote by the city council or, in a  
42 town by a majority vote of the town meeting, the police department shall establish and maintain a no sales  
43 solicitation listing of residents who do not wish to receive unsolicited visits by sales people at their home.  
44 The police department may contract with a private vendor to establish and maintain such listing, provided  
45 that the contract requires the vendor to provide the no sales solicitation visits listing in a printed hard copy  
46 format and in any other format offered at a cost that does not exceed the production cost of the format  
47 offered. The police department shall provide notice to consumers of the establishment of a no sales  
48 solicitation visits listing. A consumer who wishes to be included on the listing shall notify the police  
49 department by calling a toll-free number provided by the police department, or in such other manner and  
50 at such times as the police department may prescribe which may include electronic notification. A  
51 consumer on such listing shall be deleted from such listing upon the consumer's written request or in such  
52 other manner and at such times as the division may prescribe which may include electronic notification.  
53 The police department shall update such listing not less than quarterly and shall make such listing  
54 available to solicitors and other persons for a fee as the police department shall prescribe.

55 Nothing in this chapter shall prevent a consumer from including on such list more than one of the places  
56 where he or she resides either permanently or temporarily.

### 57 Section 3. Company Registration.

58 (a) Any company or individual who uses transient vendors to conduct door to door sales in the  
59 commonwealth whether such transient vendor is an employee or independent sales person, shall,  
60 before allowing such vendor to conduct door to door sales on the company or individual's behalf,  
61 register with the Secretary of State in a manner prescribed by the Secretary of State. The Secretary

of State shall promulgate regulations and adopt fees for such registration that promote the intention of this Chapter and minimize the costs to the commonwealth for maintaining a registration program.

(b) Every transient vendor shall, before conducting door to door sales in any municipality in the commonwealth, provide the police department in each community in which said individual intends to conduct door to door sales, with sufficient information to allow the police department to conduct an inquiry known as a “missing and wanted” check and a Criminal Offender Record Information check on such individual. The police department may develop a form for the purposes of obtaining such information from transient vendors. Said information shall include the solicitor’s name, age, home address and local address, social security number or other identifying number if the solicitor is not a citizen of the United States, a form of identification with photograph, the registration certificate of each vehicle to be used while soliciting. The police agency may require any additional information necessary to complete a missing and wanted and CORI search. The police agency shall provide each such transient vendor with a simple form indicating that the vendor has complied with this section.

(c) Every solicitor shall, when registering with any police agency, include the name and address of any person or entity the solicitor is representing or whose product the solicitor is selling.

(d) Solicitors shall carry their local solicitation registration certificate and other positive identification with them while soliciting door to door and selling consumer goods and shall produce such certificate upon the request of any law enforcement officer or person who is then being solicited.

Any company or individual who uses transient vendors to conduct door to door sales in the commonwealth and fails to register as provided in this chapter shall, for a first offense receive a warning and be advised of the need to register with the Secretary of State if the company or individual intends to continue to use transient vendors to conduct door to door sales in the commonwealth. Any company or individual who continues to use transient vendors to conduct door to door sales in the commonwealth without registering after being advised of the need to register shall be assessed a civil penalty of \$500.00.

Whoever violates this section by failing to register with the local police department, failing to produce a town issued registration certificate or failing to produce positive identification when requested by a police officer shall be assessed, for a first offense, a civil punished by a fine of \$50.00. Any second or subsequent offense shall be deemed a misdemeanor and shall be punishable by a fine of not less than \$50.00 nor more than \$100.00.

A police officer may take any solicitor into custody pending positive identification and other checks who has not registered as required or who could not produce either a valid registration certificate or positive identification when requested to do so. Any solicitor taken into custody under this chapter may be held for up to four hours pending such determinations as described above. Such solicitor may be held for more than four hours if the police have probable cause to believe the solicitor has committed a crime or is wanted in that or any other jurisdiction.

Section 4. Unsolicited sales visits; limitations. A solicitor shall not make or cause to be made an unsolicited sales visit to a consumer if the consumer's address or name appears on the then current quarterly no sales solicitation visits listing made available by the police department under section 2.

Whoever violates the provisions of this section may be assessed a civil penalty of not more than \$50.00 for a first offence and a criminal penalty of not more than \$50.00 for any second or subsequent offence. In the case of any second or subsequent offense, if the consumer solicited in violation of this chapter is a senior citizen over the age of 65, said fine shall not be less than \$150.00. Each property entered when the name of the occupant or the address is on the do not knock list shall be deemed to be a separate violation.

Section 5. Disclosures by solicitors; information provided to consumers prior to payment. (a) A solicitor shall disclose all of the following information within the first minute of a sales visit and before requesting, accepting or arranging for payment by a consumer: (i) that the purpose of the visit is to make a sale or solicit funds; (ii) the correct name of the marketing company that employs the individual solicitor who is making the call or who makes or distributes the product that is being sold; (iii) the correct name of the ultimate seller or distributor whose goods or services are being offered by means of the marketing visit; and (iv) a complete and accurate description of the goods or services being offered including, but not limited to, the retail market value of the goods or services.

(b) The solicitor shall provide all of the following information before requesting, accepting or arranging for payment by a consumer: (i) the cost to the consumer of the goods or services that are the subject of the sales call including, but not limited to, any applicable tax, shipping and handling fees; (ii) any restrictions, limitations or conditions attached to purchasing the goods or services; (iii) the complete terms of any applicable refund, return, cancellation, exchange or repurchase policies; (iv) any material aspect of an investment opportunity being offered including, but not limited to, the price of the land or other investment, the location of the investment and the fact that an investor may lose some or all of their original investment.

Section 6. Consumer objections to receipt of unsolicited sales visits; methods of compilation; notification of solicitors. The police department shall promulgate regulations to carry out this chapter which shall: (i) specify the methods by which each such consumer shall give notice to the police department or its contractor of the consumer's objection to receiving such sales visits or revocation of such notice; provided, however, that there shall be no cost to the consumer for joining the listing; (ii) specify the length of time for which a notice of objection shall be effective and the effect of a change of address on such notice; (iv) specify the methods by which such objections and revocations shall be collected and added to the no sales solicitations visits listing; (v) specify the methods by which a person or entity desiring to make sales visits may obtain access to the no sales solicitation visits listing as required to avoid visiting the properties of consumer included in such listing; and (vi) specify such other matters relating to the listing that the police department deems desirable.

The police department may create a computer access form to be completed electronically by consumers or local police agencies to add consumers to the list.

The police department shall determine the best method for maintaining said data but shall ensure that solicitors can obtain the data on a town by town basis.

Section 7. National consumer database; inclusion of commonwealth portion in no sales solicitation calls listing. If any federal agency establishes a single national database of consumers who do not wish to receive unsolicited sales visits the police department shall include that part of such single national database that relates to the commonwealth in the listing established pursuant to this chapter.

Section 8. Violations; enforcement; consumer action; penalties; attorney's fees and costs. (a) If, in the opinion of the Attorney General of the commonwealth, repeat violations of this chapter appear to be calculated or flagrant, the attorney general may initiate proceedings relating to a knowing violation or threatened knowing violation of this chapter. Such proceedings may include, without limitation, criminal actions for trespass, an injunction, a civil penalty of not more than \$5,000 for each knowing violation, but not less than \$1,500 for a knowing violation involving a consumer who is 65 years of age or older, and additional relief in a court of competent jurisdiction. The attorney general may also issue investigative demands and subpoenas, administer oaths and conduct hearings in the course of investigating a violation of this chapter. Criminal actions for trespass may be brought by any police agency having jurisdiction of the area in which the consumer complaining of a violation sits. Police officers may, based on probable cause, arrest any person believed to be in violation of this chapter without a warrant.

(b) A person who has received more than 1 unsolicited sales visit within a 12-month period by or on behalf of the same person or entity in violation of this chapter may: (i) bring an action to enjoin the violation; (ii) bring an action to recover for actual monetary loss from such knowing violation or to receive not more than \$5,000 in damages for such knowing violation, whichever is greater; or (iii) bring both such actions.

(c) In a civil proceeding resulting from a violation of this chapter, the consumer, after judgment in the consumer's favor and exhaustion of all appeals, if any, shall be awarded reasonable attorney's fees and costs from the defendant in the action.

Section 9. Time limitations for actions or proceedings. No criminal or civil action or proceeding shall be brought pursuant to this chapter: (i) more than 3 years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or (ii) more than 3 years after the termination of a proceeding or action arising out of the same violation by the commonwealth, whichever is later.

Section 10. Use of information contained in no sales solicitation listing. Information contained in the no sales solicitation listing established pursuant to this chapter shall be used only for the purposes of compliance with this chapter or in a proceeding or action under section 8. Such information shall not be subject to public inspection or disclosure.

Section 11. Remedies not exclusive. The remedies, duties, prohibitions and penalties provided in this chapter shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including any applicable remedies pursuant to chapter 93A.

Section 12. Advisory group; availability of educational materials; written and electronic information. The police department shall disseminate to citizens in a manner of the department's choosing information about the availability of and instructions on how to have their names and residential addresses placed on the no solicitation list. The police department shall include on its internet website, if it has such a site,

177 information that informs consumers of their rights to be placed on the no sales solicitation visits listing  
178 and the various methods, including notice to the department, of placing their names on the no sales  
179 solicitation visits listing.